DOCUMENT RESUME

ED 096 433 CE 002 034

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TITLE Minority Mobility Project. Final Report, September 1972-September 1973.
INSTITUTION Humanic Designs Corp., Manhasset, N.Y.
SPONS AGENCY Manpower Administration (DOL), Washington, D.C. Office of Research and Development.
REPORT NO DLMA-82-34-70-04-02
PUB DATE 9 Oct 73
NOTE 66p.; For Interim Report see CE 002 033
AVAILABLE FROM National Technical Information Service, Springfield, Virginia 22151

EDRS PRICE MF-$0.75 HC-$3.15 PLUS POSTAGE
DESCRIPTORS Employment Programs; *Equal Opportunities (Jobs); *Federal Programs; Government Role; *Minority Groups; Objectives; *Occupational Mobility; Personnel Policy; *Program Descriptions; Public Policy; Racial Discrimination; Sex Discrimination; Working Women
IDENTIFIERS *Minority Mobility Project

ABSTRACT

The Minority Mobility Project (MMP) was undertaken as part of a larger effort dealing with upgrading and upward mobility systems in the various settings funded by the Manpower Administration. The preface to the final report sets forth the broad purpose and achievements of the MMP. The first chapter presents the introductory nature of Equal Employment Opportunity Compliance and Voluntary Activities. The various contexts of the MMP are discussed, and how MMP activities contributed to broad objectives and specific operational objectives is reported. The second chapter reports on what was done and what was learned from the activities. Chapter 3 centers on the barriers to upward mobility of minorities and women in terms of what has been learned about the barriers, how they operate, and how they are part of the employment systems. Equal Employment Requirements and Upward Mobility, chapter 4, ties together some of the material presented earlier. Nine specific summary observations are presented. The final chapter, Public Policy: Observations and Recommendations, translates in terms of broad policy and implementation, the contents of chapter 4. (Author/AG)

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MINORITY MOBILITY PROJECT

Final Report

September 1972 - September 1973

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CE 002 034

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October 9, 1973

BIBLIOGRAPHIC DATA	1. Report No. DLMA 82-34-70-04-02	2.	3. Recipient's Accession No.
4. Title and Subtitle	Minority Mobility Project (MMP) Final Report September 1972 - September 1973		5. Report Date October 9, 1973 6.
7. Author(s)	Oscar Ornati		8. Performing Organization Rept. No. 02
9. Performing Organization Name and Address	Humanic Designs Corporation 1615 Northern Boulevard Manhasset, New York 11030		10. Project/Task/Work Unit No. 11. Contract/Grant No. DL 82-34-70-04
12. Sponsoring Organization Name and Address	U.S. Department of Labor Manpower Administration Office of Research and Development 1111 20th St., N.W., Washington, D. C. 20210		13. Type of Report & Period Covered Final Sept.1972-Sept.1973 14.

15. Supplementary Notes

16. Abstracts

The meaning and requirements for being in compliance with equal employment opportunity laws and ordinances were found to be broadly misunderstood by large private sector employers. Doing away with "systemic discrimination" - in the technical/legal sense - as currently imbedded in typical employment systems is the purpose of a newly developed methodology. Step-by-step instructions on how the methodology is to be applied by EEOC's representatives and, as a "self audit" by employers, have been incorporated in two manuals. These manuals are the main outputs of the MMP; the activities and "learning" of the Project are reported upon in an evaluative mode. Upward mobility in the internal labor market is found to benefit from government pressure to achieve equal employment opportunity: the closer employment system procedures incorporate scientific methodologies, such as JTRA's, the more job related the selection and placement criteria, the less discriminatory the system. Identifying the existing "faults" of current systems is found to be a difficult task not only because of technical complexity but also because of internal unwillingness to modify long established procedures. Once systemic discrimination is identified and its reality accepted, remedying the situation is found to be within the capability of most personnel specialists. The Report contains detailed policy recommendations.

17. Key Words and Document Analysis. 17a. Descriptors

Apprenticeship
Disparate effect
Disparate treatment
Distribution
Employment systems
Ethnic groups
External labor market
Females
Incidence
Internal labor market
Job analysis
Job description
Mobility
Negroes (Blacks)
Parity
Personnel management
Personnel selection
Placement
Qualifications
Recruiting
Skilled workers
Systemic discrimination
Technicians
Tests
Upgrading
Unskilled Workers

EEOC - Equal Employment Opportunity Commission
OVP - Office of Voluntary Programs
VPO - Voluntary Programs Officer
OFCC - Office of Federal Contract Compliance
TAD - Technical Assistance Division

17b. Identifiers/Open-Ended Terms

Co. A - Midwest Plant
Co. B - Career Progression System
Co. G - Equal Employment Opportunity laws and ordinances
Co. U - Protected Classes

17c. COSATI Field/Group

18. Availability Statement	19. Security Class (This Report)	21. No. of Pages
Distribution is unlimited. Available from National Technical Information Service, Springfield, Va. 22151.	UNCLASSIFIED	66
	20. Security Class (This Page) UNCLASSIFIED	22. Price

PREFACE

The Minority Mobility Project (MMP) was undertaken as part of a larger Humanic Designs Corporation (HDC) R&D effort dealing with upgrading and upward mobility systems in the various settings funded by the U.S. Department of Labor, Manpower Administration.[1] It was conducted in cooperation with the U.S. Equal Employment Opportunity Commission (EEOC), Washington, D.C., focusing upon the following central broad objectives:

- to establish better understanding of how "upward mobility approaches" already in operation in private sector organizations actually affect the mobility of minorities and women;
- to determine whether - and how - the existing upward mobility systems operating within private sector companies require modification in order to effect employment parity for minorities and women;
- to explore some approaches to enhancing the role of a federal agency in introducing more effective upward mobility systems into those private sector organizations in which such systems may be required.

The approach of the Minority Mobility Project has been to provide technical assistance to the Office of Voluntary Programs (OVP) of the EEOC and by so doing, to extract a set of learnings about the relationship between upward mobility policies and practices and discrimination.

Early agreement was reached with the EEOC on the following areas of focus for the Minority Mobility Project:

- effecting linkage between agency activities aimed at achieving equal employment opportunities and organizational programs dealing with placement, training and upward mobility;
- developing governmental staff resources to deal with the removal of barriers to upward mobility of minorities and women;
- applying of such governmental staff resources to the delivery of technical support to private industry;
- disseminating of information and transfer of techniques developed in concert with the EEOC to other agencies (e.g., Office of Federal Contract Compliance) and the development of standardized approaches and policies for dealing with the assessment and remediation of barriers to upward mobility;

1/ Since the late 1960's, HDC has conducted a series of experimental and demonstration projects aimed at developing a model upgrade training system for low-skill, low-wage workers. During the contract period covered by this report, design and implementation of career progression systems was being carried out in cooperation with a national trade association and in a multi-plant manufacturing corporation.

- "measuring" the progress of the nation toward the goal of equal employment in terms of the changes in companies, industries and geographic regions with respect to minorities and female utilization.

On the basis of the above, the MMP developed a set of specific functional objectives: (1) to provide "in-house" ongoing technical assistance, and (2) to design, test and complete two manuals guiding Voluntary Programs Officers and large private sector employers in the ferreting out of systemic discrimination.

The specifics of the provision of technical assistance were reported upon (particularly for the first eighteen months in an Interim Report[2/] and in the regularly submitted monthly and quarterly reports. No attempt will be made in this document to duplicate them. It should also be noted that: (1) much of the provisions of technical assistance involve routine interactions which contributed to the goal of strengthening the OVP overall technical capability, (2) many important activities, particularly those involving company-specific information, cannot be reported upon as they are covered by the non-disclosure requirements of the Act[3/] and (3) a number of activities are ongoing.

Thus, this report represents an attempt at describing some of the things that have been learned rather than all that has been accomplished. The learnings do not include an evaluation of the technical assistance provided by the MMP, as EEOC's Voluntary Programs activities are just beginning. One possible way in which the MMP's impact can be broadly assessed is by noting that the MMP contributed to bringing the Office of Voluntary Programs nearer to the take-off point in its development.

As implied in the objectives, the MMP was not a traditional research endeavor. Its work was, therefore, not specifically set up to test any precise hypothesis. The report on what has been learned is evaluative and inferential. To add strength to insights derived from MMP activities, data developed in other parallel R&D activities conducted simultaneously as part of the analysis of upward mobility systems were considered and are herein implied and referred to as needed.

A definitive evaluation on the relationship between equal employment opportunities legislation and upward mobility is a matter for the future. It requires a study directly focused on that question as well as further developments in time.

The major findings of this report are highlighted below.

A Preliminary Summary of Major Findings

The three broad objectives of the MMP have been achieved to a very substantial degree. Indeed:

1. In the organizations reviewed for this report, indications are that existing upward mobility approaches in many organizations

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2/ HDC's Minority Mobility Project - Interim Report, October 10, 1972, pp. 7-10 and pp. 11-35.

3/ Ibid, pp. 24-30.

presently hinder, but can be modified to help, the mobility of minorities and women.

2. Ignorance is widespread as to the meaning of systemic discrimination and particularly as to the way in which systemic discrimination is imbedded in existing personnel systems. It has been concluded that a technique for identifying systemic discrimination is needed; such a technique was developed. It has also been concluded that the introduction of modification of existing upward mobility systems to affect employment parity for minorities and women is possible only in terms of tailor-made activities and programs that flow from the ferreting out of systemic discrimination.

3. The role of a federal agency in providing technical assistance to employers has been slightly enhanced in the strengthened capability of its technical assistance staff and through the two manuals developed for it.

The Organization of this Report

This Preface has set forth the broad purpose and achievements of the MMP. Chapter 1, entitled "Overview," presents the essentially introductory nature of Equal Employment Opportunity Compliance and Voluntary Activities; here, the various contexts of the MMP are discussed. What is also reported in this Chapter is how the MMP activities contributed to the movement from broad central objectives to the more specific operational objectives.

Chapter 2, "Field Activities and the Design and Completion of Manuals," reports on what was done. It goes beyond reporting historical facts by being cast in an evaluative mode. Indeed, in this chapter we report on what was learned in each experience.

Chapter 3, "Barriers to Upward Mobility of Minorities and Women," is centered on what has been learned about barriers, on how these operate, and most importantly upon how these barriers are part and parcel of normal, not intentionally discriminatory employment systems.

Chapter 4, "Equal Employment Requirements and Upward Mobility," brings together earlier strands. Here, the interfaces between the pressures of the law, what we call "government's big stick" in bringing about the abolition of discrimination, and internal upward labor mobility are discussed in detail. Nine specific summary observations are presented here.

Chapter 5, "Public Policy: Observations and Recommendations," translates in terms of broad policy and implementation, the contents of Chapter 4.

TABLE OF CONTENTS

	Page Number
CHAPTER 1 - OVERVIEW	1
Equal Employment Opportunity Compliance and Voluntary Activities	1
The Evolving Context	2
The External Environment	2
The Legal Environment	4
The EEOC Environment	5
The Office of Voluntary Programs	8
Some Early Clarifications	10
Voluntary Programs	11
Specific Operational Objectives	11
CHAPTER 2 - FIELD ACTIVITIES AND THE DESIGN AND COMPLETION OF MANUALS	13
Analysis of Two Companies	13
Affirmative Action and Company A	13
What Was "Learned" from Company A	16
Company B and Voluntary Compliance Agreements	18
What Was "Learned" from Company B	21
The Design and Testing of the Manuals	23
The Central Ideas of the Manuals	24
The Testing of the Manuals	25
CHAPTER 3 - BARRIERS TO UPWARD MOBILITY OF MINORITIES AND WOMEN	31
Progression Patterns and the Form of the Barriers	31
Normal Promotional Procedures and Criteria as Barriers	36
The Removal of Barriers	39

	Page Number
CHAPTER 4 - EQUAL EMPLOYMENT REQUIREMENTS AND UPWARD MOBILITY.....	41
The Relationship of EEO Activities and Upward Mobility.....	41
A Summary Statement: Broad Relationships Between EEOC and Internal Labor Mobility.....	45
CHAPTER 5 - PUBLIC POLICY: OBSERVATIONS AND RECOMMENDATIONS.....	49
Policy Issues.....	49
Policy Implementation.....	52

CHAPTER 1

OVERVIEW

OVERVIEW

Equal Employment Opportunity Compliance and Voluntary Activities

To understand both the MMP's potential and its limitations, it is appropriate to start with a description of the environment in which it operated. This chapter presents such an overview, first in the broadest terms and then in terms of four specific overlapping environments.

In recent years, the manpower reach of federal policies - by the way of legislative, judicial and executive action - has been geared increasingly towards the achievement of equal employment opportunities. An active manpower policy in this area involves the lowering of barriers in hiring, training and promotions of minorities and women. Private and public action has led to some progress; the future will see greater results as current activities will make themselves increasingly felt.

The challenge is multi-faceted. As stated in the Manpower Report of the President, "The linking of present manpower institutions into an effective system remains a challenge for the 1970's..."[4/] Programmatic activities in training, placement, employment, upgrading and mobility are viewed as requiring linkages to those aimed at achieving equal employment opportunity. This, in turn, is viewed as requiring expansion of knowledge as to the precise nature of the barriers to employment parity within the employing unit.

Recently much has been learned about such barriers particularly in terms of the activities mandated upon employers by the courts. Indeed, the important advances have come in response to EEOC litigative activities. The courts, in ruling whether specific actions of the various components of the employment system and their results are discriminatory or not, have clarified the nature of barriers to employment parity more than many sociological or economic studies. What needs

4/ See Manpower Report of the President, U.S. Department of Labor, March 1972, p. 24.

to be done now is to establish how the removal of such identified barriers is to be carried out. The issue involves the requirements - the knowledge, the techniques, the employer understanding and willingness, the existing capabilities - of remedial activities. The MMP was geared precisely to that goal.

The Evolving Context

MMP activities were carried out for and from within the Office of Voluntary Programs of the EEOC. Yet, there were four distinct but overlapping environments within which the MMP operated: the external, the legal, the EEOC as a whole, and its Office of Voluntary Programs.

The External Environment

The first environment is the broad world of work where discrimination in employment of minorities and women occurs. It is also the world of employers attempting to respond to society's changing needs, to the passage of new laws and to the pressure of activist groups. Here, the salient facts and developments are:

1. The increasing long-run improvement in the employment penetration of minorities in the economy and among the larger employers.[5/] To this, particularly for the years 1970-72, one must juxtapose the realization that the employment status of any group - be it a minority or not - is determined primarily by the economic conditions of the nation. While susceptible to the influence of government and changes in the personnel and manpower system, the employment status of minorities (and women) can be improved only when the aggregate demand for labor is high. Indeed, most analyses of changes in Black employment penetration emphasize short-run changes and one must note that the

5/ See HDC's Minority Mobility Project - Interim Report, October 10, 1972, pp. 36-51 and particularly Table 8, p. 41.

1971-72 relative employment decline inversely affected the status of minorities.[6]

2. The national occupational distribution of employed non-Whites over the last five years, viewed in terms of traditional occupational categories, shows a clear-cut upward shift with the higher categories showing an increased, and the lower categories a decreased, minority employment incidence. When the non-White incidence in the higher occupational classification is compared with that of Whites, it seems clear that the minorities' upward shift is much larger and, therefore, it cannot be explained as due to the general and long-term occupational shift.

3. The continued inferior status of women in the labor market[7] modified by recent employer activities to upgrade women and to equalize their pay to that of men.

4. The development of various programs rationalizing the working of internal and external labor markets - the United States Employment Service's (USES) job banks and the various experimental computer applications - all have contributed to the expansion of minority employment penetration rates. The existence of community-based agencies, with inventories of available minority employees, [redacted] made a more efficient employer outreach possible.

It can be said that the external environment influencing the work of the project has been marked by rapid change. There is little doubt that the national stress on equal employment opportunities has had impact: employers hire more minority workers than they did in the past; there has been a small upward shift of minorities in the occupational structure. Large employers, particularly, are establishing affirmative action programs; hiring practices are changing, and there is a slight increase in minority apprentices. Still, the movement is glacially slow at best. Many employers still interpret "doing something" as legal jousting to avoid basic changes

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6/ See, e.g., The Manpower Report of the President, March 1972, pp. 38-40.

7/ HDC's Minority Mobility Project - Interim Report, October 10, 1972, pp. 73-76.

in corporate policy and operations; others adopt "affirmative action plans" that offer no more than the broadcasting of pious homilies or the launching of sensitivity training and "consciousness-raising" programs.

The Legal Environment

Over the last three years equal employment opportunity jurisprudence grew by leaps and bounds. Of concern to the MMP was the emergence of a clear-cut interpretation of the term "systemic discrimination." A detailed examination of the legal definition of systemic discrimination, particularly as it affects employer behavior, is presented in HDC's Employer Manual. Here it is defined briefly as:

> Discrimination is caused in two ways. The more important of these is known as systemic discrimination. This means that the denial of equal opportunity is the inevitable consequence of some business practice, and does not involve or require any specific action against the discriminatee.
>
> ... The hallmark of systemic discrimination is that it involves the use of apparently neutral criteria, which are in most cases applied to all classes alike (in some cases the system is both inherently discriminatory and discriminatorily administered), which results in the denial of equal opportunity. The identification of these apparently neutral criteria is the touchstone of an investigation of a case involving systemic discrimination.

MMP activities and its staff training for the Office of Voluntary Programs had to be continually adjusted to meet the requirements of the ever-changing definition of discrimination. On an assumption (later confirmed) that there would be a lag in the understanding of the meaning of systemic discrimination by employers, the MMP focused its attention on the explication of systemic discrimination. This was viewed as consistent both with the goals of the equal employment policy and the U.S. Department of Labor concern with upward mobility. Certainly, insuring that minorities and women not be left at the lowest levels of the job hierarchy when it comes to obtaining jobs within the internal labor

market is as important, if not more important, than combatting discrimination in hiring. What is also at stake is establishing minority/female access to "every job" not just "any job." Policies as to all job placements, and not only as to the initial job, are involved. Removing patterns of discrimination calls for reanalyzing the totality of a company's manpower planning and administration system.

Recruitment and selection, transfer and promotion, the span of seniority arrangements, all influence the internal mobility of minorities and women, and the Minority Mobility Project. focused upon all these aspects.

The EEOC Environment

In the HDC Interim Report cited earlier, it was noted that:

> "...governmental pressures to create a reality of equal employment opportunities, heightened by the passage of the 1972 amendments to the Civil Rights Act, have created an external motivation - an expressed or implied "big stick" upon the employer - to increase the utilization and upward mobility of minorities. The EEOC has been given the mandate of eliminating unlawful employment practices, the definition of which is so broad as to place the EEOC in the middle of all matters dealing with employment, hence, with all matters of upward mobility."

The centrality and importance of the Commission's role in matters of upward mobility is not generally understood. But, understood or not, the last 12 months represented a period of exceptional growth, development and achievements of the Commission which greatly reinforces its "big stick" stimulating employers to the analysis of their total personnel systems. The highlights of these developments have been: the enlargement of its staff and budget; the launching of a number of suits greater than the total of the seven previous years; the favorable judgment of the Courts in an impressive number of important cases; the regionalization of its activities; the AT&T consent decree; and the establishment of "litigation centers."

Also of importance is the fact that the Commission, within the past year, has reorganized itself so as to expedite charges

of discrimination through the courts. A system has been set up which tracks types of discrimination for quick enforcement in the courts. Under this new system all charges are grouped into one of four categories or "tracks." Tracks one and two are composed of named and pre-selected respondents who represent large employers with either national or regional operations and where litigation may expand the Commission's prediction. Tracks three and four are comprised of other respondents and may represent a source of referrals to other agencies and to private litigation groups. To implement track one, the Commission also established a new organization: the National Division.

These developments and its legal successes gave the Commission a heightened litigative orientation. The Commission's proclivity for the legal approach was strengthened by the courts' striking down employer after employer for their vacuous claims for bona fide occupational qualification (BFOQ) exemptions or justification of discrimination under the guise of "business need." Comparing the Commission's achievements of 1964-70 with those of the immediate past reduced already low expectation of the benefits to be derived from employer-originated activities.

The Commission's orientation was not without precedent. Indeed public hearings on industry-wide performance in 1969 and 1970 both presaged future direction and set the mood for the degree of credence one could give to employers' willingness to internally amend policies. By way of example, cited here are the series of questions and answers posed at the March 1969 hearing on the policies of the Bank of America.

> "The Commission: ...So the Bank of America has been a believer in the policy for a long time, yet it wasn't until 1964 when the State of California approached you, that you had a written plan to do anything about it.
>
> The reply: Other than our policy statement in our standard practice manual.
>
> Question: How far do you think a policy statement in the bank practice manual will carry you?
>
> The reply: It does evidence to our operation officers and managers what the bank's policy is in regards to employment. Now, recognizing that this standard practice manual is quite all-inclusive, I would have to suggest that this draws more than normal attention.

Question: What is the size of your standard practice manual?

The reply: It would run several hundred pages because it covers every facet of the bank's operations.

Question: How much is devoted to non-discrimination?

The reply: I would say a portion of one page under personnel policy."

The Commissioner, having proven his point, closed with "that is all I have."

Court decisions that spelled out the terms of, and often the mechanisms for, remedial actions against which the employer raised no technical objections further led the Commission to believe all that was needed was to compel employers to stop discriminating. In the view of the majority of the EEOC staff, except for an occasional admission to actual shortages of minority personnel in a few esoteric technical occupations, there was no technical reason or lack of know-how that should prevent the employer from creating a much better distribution of minority and female employment.

The consequences of the legal/enforcement orientation of the Commission upon the MMP were on the whole beneficial, leading the MMP and its staff to look at personnel policies and practices with a harder eye. In particular, this Commission orientation moved the MMP from original concerns with progress to dealing with activities aimed at minorities to the broader discriminatory context of systems. In retrospect, the legal approach can be said to have produced two new realizations that are reflected in much of the work on the Manuals:[8/]

1. Title VII is the catalyst that generates changes in personnel practice of an almost revolutionary impact. Indeed, if one can broadly summarize personnel activities and thought during the past three decades as being those activities in which

8/ See Identifying Systemic Discrimination: A Manual for Voluntary Programs Officers of the Equal Employment Opportunity Commission, HDC, July 1973, and Identifying Systemic Discrimination: An Employer Manual for a Self-Audit, HDC, September 1973.

the employer tries to place the "round peg in the round hole," it can be argued now that Title VII is redefining future personnel activities around the question "What are the grounds for deciding that the hole is round or square or what have you?"

2. Title VII emphasis that the business organization must justify all staffing decisions in terms of their relationship to "the safe and efficient operation of the business" and be "manifestly related to job performance" gives truly rational and scientific personnel procedures and practices new and added justification. Indeed scientific personnel procedures, properly applied, not only are non-discriminatory but - in light of current jurisprudence - would be so found by the courts.

The Office of Voluntary Programs

The statutory requirement of providing employers and individuals protected by the Act with technical assistance in complying with the requirements of the Act is lodged with the Commission's Office of Voluntary Programs (OVP). The OVP is organized into three divisions, the Technical Assistance Division (TAD), the Educational Program Division, and the Special Projects Division. TAD is staffed by Technical Assistance Officers at the headquarters in Washington and with Voluntary Programs Officers (VPO) deployed in the region, reporting in a direct line relationship to the regional directors.

In most situations, particularly where no issue of individual complaints is involved, the Technical Assistance Officers are the principal vehicles of contact between the equal opportunity/personnel officials of organizations and the government. Thus their task is large, yet technical assistance, when all is said and done, is provided by only about 30 professionals who have to deal with many thousands of employers. The staff's activities are varied as well as numerous. Through workships, conferences, etc., they raise the awareness of racial and sex issues in the employer's community; they interpret the requirements of new court decisions and clarify the implication thereof in terms of shortcomings of current employer practice.

Technical Assistance Officers (at headquarters and in the field) are flooded by employers' requests as to the legality of a particular application form, test, or employment form.

This flow of employer requests, while indicating the large need for and potential of technical assistance, is at present dysfunctional. Firstly, it reveals the continued "administrative orientation" of the employers' approach to compliance; it indicates the presumption that if an employer is not, for example, inquiring about arrests on an employment form, the employer is not discriminating (when, in fact, it is the use and not the fact of such information that may lead to a charge of discrimination). Secondly, Technical Assistance Officers find the questions that are posed are rarely answerable. Thirdly, this form of technical assistance is frustrating as it reinforces an awareness of the extent to which the Technical Assistance function is unfulfilled.

Being part of an agency whose main responsibility and mode of operation is investigation and compliance makes the voluntary orientation of the OVP somewhat of an anomaly. Up to the middle of 1973 the OVP's mission still appeared unclear to many of its members. There was little understanding of the relative weights to be given to servicing an apparently antagonistic clientele, the employer, and/or the discriminated employee. Further, there did not exist, nor is there yet a clear-cut distinction, between the functions of the Technical Assistance and Education Divisions. Such a lack of clarity as to organization and mission has practical consequences. Indeed the OVP's consequently have no answer to questions such as: Are they, in line with their very title, to cajole employers into compliance with the law, or are they to threaten with charges? What are the benefits that employers derive from applying for Technical Assistance; what is the VPO (the man in the field) to do if, in the provision of technical assistance, he in fact discovers a broad pattern of discrimination by the employer he is "assisting"?

The lack of clarity of the mission appeared to the MMP somewhat compounded by an apparent lag in comprehending the change of orientation in the Commission as a whole. Until recently the majority of the VPO's had come to the OVP with the essentially voluntary and exhortative orientation of the early Commission years. Most VPO's had come to the Commission because of their community orientation and contacts with a social work orientation rather than an investigative one, and were imperfectly acquainted with personnel practices. They had only limited experience in dealing with employers

in the analysis of personnel procedures in an investigative and compliance context.9/

The operative questions of Technical Assistance personnel were: How can we persuade employers to do better; how can we encourage them to launch better, more effective, affirmative action programs; how can we lead them to more effective recruitment programs?

The recent escalation of the Commission's investigative orientation made the OVP's task even more difficult, and achievements in the courts created greater expectations for which the OVP's capabilities were less than a perfect match. As pointed out earlier, the MMP activities were "hosted" by the Office of Voluntary Programs, which at best was ambivalent in its reception. Partly because the functions of the MMP had not been sufficiently explained in advance, and partly because it was perceived by some as a representative of the legal/investigative orientation of the Commission, the MMP was at first viewed as a threat. The goodwill of all the parties overcame initial misconceptions and the two groups endeavored to work cooperatively.

Some Early Clarifications

Retrospectively, the first task appears to have been a clarification of the role of technical assistance in an investigative setting. Technical assistance was redefined as follows:

> "...technical assistance operates first by identifying discrimination, by recommending ways to eliminate it, and where possible, to compensate for past discrimination by obtaining an agreement from the employer on the introduction of remedies, and finally by tracking the implementation of remedies."

The orientation of technical assistance can be described as "compliance/investigative" in a voluntary mode. The provision of technical assistance in this context implied no conflict

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9/ The 1973 newer Technical Assistance Officers came with more of a compliance orientation and the number of VPO's with at least some investigative training increased.

with the compliance function. Providing technical assistance goes beyond the assessment function. By, for example, requiring the identification of possible discriminatory activities, technical assistance goes beyond simply checking whether the employer is carrying out a set of activities: it helps the employer identify how his activities are carried out and evaluates their effect.[10]

Voluntary Programs

The presumption underlying the importance of voluntary action, with which much of the assistance activities reported here deal, is a simple one: no legal requirements can become reality unless they are "internalized." Eventually, the employers covered by the law must develop methods to review their own performance and plans for changing and monitoring their own hiring and promotional practices.

The legislative mandate to provide technical assistance to employers states that the Commission shall have power to furnish to persons subject to this Title such technical assistance as they may request.[11] Thus, the OVP, in fact, was given the responsibility to provide support to that majority of employers not involved in the investigation, litigation or compliance activities conducted by other units of the EEOC. Because of its widespread "clientele," the OVP becomes the major governmental instrument with the responsibility of providing guidance on the technical details of required changes in personnel systems.

Specific Operational Objectives

The broadest purpose of the early MMP effort with the EEOC was to identify how and where, given the evolving context described above, HDC's capabilities and experience in upgrading and upward mobility could assist the operations of the Office of Voluntary Programs. During the first three to six months, it was required that the joint activities concentrate upon:

- orienting OVP and HDC staff to respective interests and capabilities;

10/ See HDC's Minority Mobility Project - Interim Report, October 10, 1972, p. 53.

11/ Title VII, Sec. 705 (g)(3), The Civil Rights Act of 1964, as amended by Public Law 91 (1972).

- identifying the various activities that would be of interest to EEOC, the U.S. Department of Labor and to which HDC's capabilities could contribute;

- evaluating those activities to establish a clear order of priority and selecting one or more for an intensive analysis.

In this early phase of the project, the basic mission of the Commission's technical assistance effort was jointly clarified. It was the OVP's responsibility to provide employers with assistance in the identification, elimination and remediation of discrimination in employment. To carry out this mission, the OVP is required to consider and analyze internal labor market rules which govern the allocation of jobs.

The specific operational objectives of the MMP were thus established as:

- the identification of those personnel practices which inhibit the upward movement of minorities and women within the organization;

- the development of techniques through which to increase the utilization and upward mobility of minorities and women.

The project was structured to produce the following deliverable items:

- A Technical Assistance Manual for the use of EEOC's Voluntary Programs Officers and, possibly, Compliance Officers of other agencies. The Manual would provide a guide to the identification of discrimination and the presence of affected classes, and the preparation of remediation proposals which would lead employers to develop more rapid ways of upgrading minorities and women.

- An Employers Manual to be used by organizations in the private sector as a handbook for the identification of specific discrimination which forms the basis of activities that would enhance the upward mobility of minorities and women in the internal labor market.

CHAPTER 2

FIELD ACTIVITIES AND THE DESIGN AND COMPLETION OF MANUALS

FIELD ACTIVITIES AND THE DESIGN AND COMPLETION OF MANUALS

In this chapter, we describe the highlights of what we have done, reporting upon our activities in a more evaluative mode, and focusing upon the learning derived.[12/]

Analysis of Two Companies

Affirmative Action and Company A

The launching and filing with the appropriate cognizant agencies of hundreds of thousands of "Affirmative Action Plans" by major American employers doing business with the government represents the administrative peak of an iceberg of non-discriminatory employment programs and activities of the second half of the 1960's.

Juxtaposed to this large effort are the small gains in employment distribution of minorities. In the EEOC's statistical report on Job Patterns for Minority and Women in Private Industry, Chairman Brown showed how the statistics are a "... documentation of the results of discrimination." The Chairman went on to note his hope that "... whatsoever can be learned from these data can then be turned to the resolution of the crisis."

In agreement with the OVP, and in line with the perceived needs of that office, the MMP turned its attention to finding a way to develop an instructional vehicle to assist employers in launching more effective affirmative action programs. The prerequisite for launching the search for "a better way" was understanding the possible imperfections in the state-of-the-art and developing improved methods. While the very issuance of an affirmative action plan was accepted as a corporate

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12/ Various MMP field activities and the details of work carried out in two host companies have been reported upon in detail in HDC's The Minority Mobility Project - An Interim Report, Chapter 3, pp. 11-35.

commitment to the goal of non-discrimination in employment, this was no guarantee of effective results.

Company A was selected as the host for such study. Indeed Company A had:

- given high visibility to its affirmative action work;
- issued a scholarly "white paper" on its corporate commitment;
- a long record of minority employment;
- participated in a variety of voluntary minority assistance programs (Plants for Progress, NAB/JOBS, etc.);
- the reputation of being "a good employer" from the compliance point of view.

The work with Company A involved: 1) statistical analysis of minority utilization at the Corporate EEO-1 level; 2) detailed statistical analysis of utilization in 16 operating units; 2) careful evaluation of written documents dealing with policy and procedures relative to the employment of minorities; 4) field visits in five related locations and 5) detailed evaluations of a separate ongoing affirmative action program.

The Formative Evaluation. Company A's Affirmative Action Program showed that few minority promotions were traceable to it. It also yielded the following highlights:

- an insufficient emphasis in the identification of minority candidate services - "too limited in terms of search";
- a widening of minority candidate pools that did not yield proportional promoting, because reasonable priorities were not established for minorities in the selection process;
- special training programs providing general education not geared to specific knowledge requirements of specific jobs - "training that does not yield placements."

The Summative Evaluation. The following findings and resolutions were reported to Company A:

- Affirmative Action Programs geared to managerial, professional, technical and skilled craftsmen categories were found inefficient in terms of a qualitative and quantitative response to such underutilization.

- It was also recommended that Company A:

  a) establish EEO goals and timetables based on the assumption that the incidence of qualified minorities in the labor market is such that parity in each occupational category is realizable;

  b) identify, for immediate minority placement, those higher rated jobs in each line of progression where company experience or longevity is not a valid requirement for placement.

- Corporate Affirmative Action Plans appear to have created more of a simulation of compliance rather than a broadly integrated reality of managerial decisions, thus:

  a) compared to the numbers of minority promotions, too much emphasis seems to be placed on the giving of speeches, the announcements of scholarships for minorities, etc.;

  b) statements about affirmative action seem excessively weighted by modifying clauses such as "... to the extent possible," "... wherever feasible," etc.;

  c) affirmative action activities are weakened by the fact that they are viewed in the diffuse context of the company's social responsibility for the future of the Nation, etc.;

  d) the goal setting process at the operating component level, instead of being a "scientific" analysis of the relationship between business needs and minority availability, appears to be only a carry forward of past trends.

- Affirmative Action Programs were found strengthened by specific and pinpointed ad hoc intervention-type activities that directly affect the hiring, promotion and retention of minorities. These are exemplified by the following:

  a) directives to unit managers requiring them to insure a significant representation of non-exempt salaried minorities among those who are designated as "critical";

  b) renegotiation of collective bargaining agreements - in the face of work force reduction - to remove from the "bumping" line a department primarily composed of minorities;

  c) personnel specialists applying "subtle pressures" to those responsible for hiring to reinforce affirmative action commitments;

  d) requiring that Blacks removed for lack of work be replaced by other Blacks; insisting that efforts to hire qualified minorities continue irrespective of work force reductions.

What Was "Learned" from Company A

The MMP drew the following major findings from its experience with Company A:

- Even where corporate commitment to non-discrimination is large, visible and implemented by many and costly affirmative action programs, it coexists with systemic discrimination.

- Affirmative action plans geared to anything but a detailed analysis of the specifics of systemic discrimination in the operating unit are bound to have limited minority placements.

- The inefficacy of affirmative action programs is not traceable to lack of technical know how. Personnel specialists know how to design and launch such programs; experience and information concerning the "how to" is ample. Rather, their inefficacy is

traceable to failures of analysis of internal conditions, which may be discriminatory, and to problems of implementation in the face of conflicting policies and procedures.

- The much praised "white paper" detailing Company A's application of its systems analysis approach was found to deal with "uplift type" rhetoric and naive reporting forms. The allocation of responsibility to line management without directives for a diagnostic analysis was found to <u>in fact</u> be a way of <u>not</u> achieving stated goals.

From findings that effective affirmative action programs must follow rather than precede the ferreting out of the personnel policies and procedures that create systemic discrimination - as well as from other experiences to be described below - the MMP concluded that the development of a "prototype affirmative action plan" would not be useful. Indeed, affirmative action plans have to be "tailor made" by and for each operating unit. Consequently, a kit of "how to" instructions could at most include generic guidelines indicating characteristics of programs with a greater probability of success.

<u>A Major Caveat</u>. The MMP assumed that Company A is representative of the large multi-plant, multi-product, organized manufacturing company. Both the plants visited and the programs utilized were carefully selected for their representativeness. Nothing has developed since the field study was completed to deny the assumption of representativeness nor have later developments denied the finding. A major <u>caveat</u> needs to be introduced concerning the validity of findings as far as the time variable is concerned. It should be noted that most of the affirmative action programs studied were relatively young; furthermore they were analyzed in a period of limited employment expansion following a growth period. The MMP's findings that few minority placements are traceable to these programs is beyond challenge. It is possible that their effectiveness is delayed and that the timing of the analysis was improper. The future may still yield benefits that were not observable at the time of the survey.

Discussions with employers relative to manual testing (see below) all indicate that the gestational time period of all affirmative action activities is long. Available data suggest an 18 to 36 month lag between the launching of programs and their visible results. Also in the Company A

analysis the MMP did not assess the impact of the internal monitoring activities contemplated in the corporate "white paper." This could not have been done as they were barely launched at the time of the completion of our work with Company A.

Outputs. The above findings were strengthened by the Company B experience, and were incorporated into appropriate sections of the VPO and Employer Manuals.

The central points of the analysis of the characteristics of affirmative action were also detailed in an article published in the September-October 1972 issue of the Personnel Administrator.

Company B and Voluntary Compliance Agreements

At the time of launching the Company A analysis, the MMP plan had been to repeat that analysis in a company whose compliance performance was "bad." (Company A had been perceived as a "good" compliance.) The discovering of such systemic discrimination in Company A, coupled with the heightened realization that very little was known about the best way to identify the sources or immediate causes of systemic discrimination, suggested a significantly different orientation to work with Company B. While still searching for ways to develop effective programs, the work at Company B (at this point carried out in much closer daily cooperation with the local VPO's) had to be used primarily to develop a method to identify systemic discrimination.

Of importance in shaping the work of Company B were developments internal to the Commission which heightened the need for training VPO's in the identification of systemic discrimination and for the development of instruments through which technical assistance services could be concretized and made measurable.

Company B Activities. Prior to and independent of the MMP, the EEOC had identified the public utility industry as a large and important subsector of the private economy with systemic discriminatory characteristics. Here, the immediate goal of providing technical assistance was integrated into a larger effort aimed at changing the total industry's minority

and female utilization pattern. Ten (10) utilities were brought to court on broad patterns of discrimination. A number of large utilities were identified as possible vehicles in which the OVP and HDC would provide technical assistance on an experimental basis.

Agreement was reached with one of these and it was selected as Company B. Given these antecedents, the relationship with Company B of the local Office of Voluntary Programs and the MMP soon acquired certain investigative overtones. Company B can, therefore, not properly be labelled as a "host." The actual host turned out to be the regional VPO capability. The work itself focused on statistical analyses of data submitted by the Company and on negotiations about remedial activities.

The emphasis was placed upon the analysis of personnel policies, practices and procedures which inhibit the upward mobility of minorities and women. Since Company B had a well-delineated mobility system, it was viewed as having great potential as a case study of how existing seniority systems need to be modified to assure greater equality in the distribution of available promotions.

In terms of the provision of technical assistance, the effort at Company B was viewed as providing the setting for:

- the training of the OVP field technical assistance staff in one region;
- the development of a model "voluntary agreement" replicable in other situations;
- the collection of inputs in the development of the OVP technical assistance manual;
- the provision of preliminary inputs in the development of the "employer guidelines."

The work at Company B was viewed as leading to:

- "findings of fact" concerning the Company's personnel policies and practices as they affect the upward mobility of minorities and women; these, where necessary, to specifically describe situations of discrimination,

the presence of an "affected class," as well as of inefficient personnel practices;

- recommendations to be used in establishing a written agreement, covering remedial activities, between the Company and the EEOC or lacking such development the taking of the Company to court.

Details about the situation, the formative evaluation and recommendations pertinent to Company B are reported upon in HDC's Interim Report, pages 24 through 33.

Company B and Upward Mobility. Five major findings of fact of general usefulness were derived from the work at Company B:

1. Where upward mobility systems exist and when these are reinforced by collective bargaining agreements and job bidding/promotion procedures, they operate as well for women and minorities as for other employees. Such systems while in themselves not discriminatory are not necessarily free from earlier discrimination in hiring and placement nor, in their emphasis on seniority, do they help compensate for earlier discrimination.

2. Existing mobility systems can be modified by management to accelerate the upward mobility of minorities and females within broad occupational groupings. In agreement with the union, management can modify the seniority systems to protect minorities in the face of work reductions, or management can, when these are barriers to upward mobility, encourage changes in apprenticeship entry requirements. Managements and unions can bring about changes in existing contractual procedures that limit transfers across lines of progression.

3. The presence of affected classes - minority and female underutilization - is most frequently traceable to the criteria used by managements in job placement. While fairly administered, non-job-related placements turn out to be barriers to minority and female employment. Such placement decisions make for a kind of permanent discrimination even where the progression system is effective.

4. Upward mobility of minorities and women takes place

only within broad occupational groupings - within the craftsmen category, within the clerical area, etc. - and never involves movement between such groupings.

5. Both the utilization and mobility of minorities and women can be accelerated more easily among the "exempt"/salaried categories. In such positions, job requirements are less precise, collective bargaining restrictions less of an issue.

What Was "Learned" from Company B

Most of the substantive progress in the MMP activities was achieved through the albeit often tendentious work with Company B. The basic design of the audit methodology was developed through the fits and starts of data collection and analysis in that setting.

Advances in the development of the audit methodology stemmed from truly joint endeavors. The MMP participated in developing the approach to Company B, but whatever future success may be attributable to the newly developed methodology is due as much to the contribution of the various TA officials and their interaction with other Commission officers and personnel as to the Project.

The concepts of parity and proportionality (see below), although implicit in the minority utilization measurements, were firmed up in the crucible of the question of whether they would stand up in court. More expeditious data collection methods were developed mainly through the experience of asking for useless data. The need to derive some kind of instrument through which technical assistance to a company could be viewed as complete and of measurable effect led to the development and preliminary shaping of the idea of a Voluntary Compliance Agreement.

In addition, at a more specific level, we found at Company B:

- no noticeable lack of "know how" of an applied kind involved in procedures or criteria that had a disparate effect. Contrarily, in every case in which a hiring or placement criteria was found to have a disparate effect, the presence of the criteria itself indicated a departure from rational personnel practice.

- discriminatory procedures and criteria which were always traced to implicit "value systems." These had a disparate effect that were not found justifiable in terms of Company B's business need.

- efforts to develop "remedy packages" in response to a finding of systemic discrimination of the employment system - or subsystem thereof - were found to be fruitless. Indeed, as with affirmative action plans, remedies must be specific and developed after detailed analysis of conditions. The remedy has to be "tailor made" and there are no packages.

  For example, having established a pattern of discriminatory job placement traceable to inappropriate criteria, the only conclusion that the MMP could reach in formulating the remedy was "scratch the criteria."

  Substitute criteria can be developed only by the Company through internal job analyses.

  Having established that existing procedures in job-bidding sequences were discriminatory, the Commission could only formulate a call for "contractual modifications" of bidding procedures. The development of the specifics of a new bidding procedure could not possibly be a matter of Commission involvement; it must arise from experience and the negotiations of interaction between the company and its Union.

- the personnel practices that are part of the kit-of-tools of the scientific personnel specialist were found to be useful in their present form. JTRA's, skill and knowledge scales, the methodology of building career ladders, the structure and process model of HDC,[13/] or for that matter all contemporary techniques of job measurement and analysis, were found appropriate both to the identification of systemic discrimination and for the development of remedies.

13/ See HDC's Increasing Employee Mobility Opportunities: An Employers Handbook for System Design, July 31, 1972.

Voluntary Compliance Agreements. When originally approached by the OVP with the offer of technical assistance as an alternative for legal action, Company B was informed that the process might lead to the signing of a document in which it would commit itself to a written document specifying certain affirmative action type activities. The specifics of such an agreement were left hazy. The company's audit represented the first application of the newly developed methodology for the identification of systemic discrimination and highlighted a large number of discriminatory situations. The submission of this document inclusive of the text for a recommended agreement in which the Company was to engage in a large number of changes in personnel practices caused no small surprise reaction. Temporary disappointments, accusations and counter accusations were later followed by a process of "bargaining-like" negotiations. Such activities soon became the province of the Commission. The MMP properly moved to the background while working on refinements of the concept of a Voluntary Compliance Agreement. In September 1973, agreement was reached with Company B. At the Commission, the idea of a Voluntary Compliance Agreement as a modified affirmative action plan developed through the application of the audit is an active one.

Outputs. The major output of the work at Company B was the first draft of the VPO Manual and the concept of a Voluntary Compliance Agreement. Modified findings about remedial activities were incorporated in both the VPO Manual and the Employer Manual.

Procedures surrounding the filing of a Voluntary Compliance Agreement, its precise standards, and legal status have yet to be completed by the EEOC.

The Design and Testing of the Manuals

Every employer, regardless of size or the nature of goods and services produced, maintains personnel practices and procedures in order to manage and control the job placement function. In the development of employment systems, a development that takes time but is often reflective of immediate needs, many discriminatory practices unintentionally result. The need is apparent for a diagnostic tool that will highlight situations that yield disparate effect. From there one can move to precise identification of the specific

personnel procedures and criteria that cause the unwanted effect. Hopefully, the audit constitutes the first step in the effort to bring such practices into consonance with the requirements of the law.

The Central Ideas of the Manuals

An employment system can, a priori, be viewed as non-discriminatory when the following relationships exist:

- Representation of minorities and females in the employer's flow of applicants is roughly proportionate to their representation in the labor force of the appropriate local labor market.

- The hiring rates of minorities and females are roughly proportionate to their representation in the applicant pools.

- Minority and female placements among departments, divisions or other appropriate groupings are approximately equal.

- The representation of minorities and females in training programs is roughly equal to their presence in the company's employment.

- The incidence of minority and females in promotions is roughly equal to the incidence of promotions of other population groups.

- The incidence of minority and female terminations is roughly equal to that of their representation in the company's employment.

One can also say that the "parities" and "proportionalities" listed above describe a kind of "equilibrium" condition. Surely, as with other equilibrium statements, they are never entirely observable in actuality; they represent a goal, a victory towards which a non-discriminatory employment system will inherently tend. The equilibrium conditions represent the way minority and non-minority individuals wind their way through the employment system when its procedures are non-discriminatory and the election criteria are job related.

Parity is thus central in the Manuals' methodology.[14/] The Manuals are structured to provide instruction in data collection and in the application of incidence, parity and proportionality measures. These highlight instances and from these the analyst is instructed in analyzing specific employment procedures and criteria. Instruction in the details of such analyses is kept to a minimum in the manuals as they do not require the development of new instructions. Little space is given to explanations of the way the job relatedness of selection criteria is tested for, nor is much space given to the methodology to be used in the establishment of job or career ladders. The reader is assumed to know the JTRA and similar techniques and to have access to work such as, for example, HDC's Increasing Employee Mobility Opportunities: An Employers Handbook for System Design.

The Testing of the Manuals

From December 1972 through June 1973 about one half of the MMP's activities involved testing and reviewing the Manuals. These "tests" involved the following sets of activities:

1. Internal testing of the VPO Manual involved:

   - discussions with TA staff of the Commission on the substantive approach and content of the VPO Manual;
   - discussions with VPO's as to clarity of the instructional orientation of the Manual;
   - collection and analysis of written comments from other VPO's attained through the collaboration of the OVP;
   - collection of comments on style and clarity.

   The internal testing process yielded a set of specific modifications as reported on pages 28 and 29 of HDC's Quarterly Report, December 1972 through February 1973. In a broader sense, it can be fairly observed that the VPO's acceptance

14/ For a detailed description of parity measures, see HDC's Minority Mobility Project - Interim Report, October 10, 1972, pp. 36-51 and Appendix A.

of the Manual was reluctant. While its approach and methodology were found unchallengeable, the Manual at first was perceived as difficult and its application time consuming. Unfortunately, it has been impossible to separate the reception of the Manual by the OVP's staff from discussion of the mission, and similar problems discussed earlier.

The MMP's staff worked hard at trying to respond to such criticism; the texts were rewritten repeatedly Our final conclusion, with which the VPO's agreed, was a recognition of the inherent complexity of the process itself. There is little doubt that instruction in the use of the Manual is a requirement for users unfamiliar with personnel practices and investagative techniques.

2. Testing of the Employer Manual involved 50 employers who were originally targeted for a test of the draft Employer Manual; 25 of these were asked to comment about the Manual after careful reading and 25 were asked to comment upon it after an independent application of its methodology. The original target was not achieved.15/

As of September 1973, 20 private employers and two professional associations were involved in the process of "testing." Through activities entirely unrelated to the HDC-DOL contractual relationship, the Employer Manual methodology was applied in its totality to two large national banks. The Manual's methodology and approach was described and discussed with about 200 businessmen that participated in seminars sponsored jointly by schools of business and HDC.

The discussions that were conducted with the 20 companies can be described as "open-ended" and free flowing; they were, in fact, semi-structured as in each case we probed the same issues along a limited set of original questions presented everytime in almost identical words. The interviews varied in length from 20 minutes to four hours. In only three cases, the interview involved only one

15/ For details thereof, see HDC's Quarterly Report, December 1972 through February 1973, pp. 23-32.

individual; in all other cases, the interview involved several company representatives.

Specialists in compliance on the staffs of the American Management Association and at the Conference Board surveyed the draft manual with care, and this was followed by lengthy discussions. The latter group in particular noted the similarity of the Manual's orientation to the work that they were carrying out themselves.[16/]

Obviously the testing process - other than its full application in two banks - is best described as heuristic. Nevertheless it yielded two conclusive findings:

a) The methodology of the Manual audit is effective. Its application provides the employer that carries out the audit with an effective way of pinpointing and therefore correcting systemic discrimination.

b) Most employers are unclear as to what equal employment opportunity is all about. The confusion is multifaceted stemming primarily from the overlap of Federal manpower policies. Concern with employing the hard core unemployed, OFCC contract compliance and compliance with Title VII or the Equal Pay Act all are viewed as the same hard to get-a-hold-of "ball-of-wax." Specifically,

   - Most company interfaces with the Government in the implementation of EEO policy stem from their dealings with the OFCC and compliance reviews, which most found to be pleasant and routine.

   - All companies clamor for technical assistance in the recruitment of "good, stable and

16/ After the discussions described above were completed, the Conference Board issued their Report No. 589, R. G. Shaeffer, Non-Discrimination in Employment: Changing Perspectives, 1963-1972. The orientation of this report is very similar to the MMP and is cited in the Employer Manual.

promotable minorities"; "Find me a good Black or a woman who is qualified..." is the constant refrain.

- Most company staffs in the personnel field perceive dealing with the EEO problem as a responsibility to be faced with existing resources and by existing personnel who either "know how" or are "able to learn" just as they have learned to deal with safety requirements, the union or what have you. This perception of self-sufficiency HDC found to be, in almost every case, denied by the fact that the staffs inquired about minor procedural and administrative matters well explained in existing EEOC and OFCC regulations. (For example, "How can I find out the name of the person who has filed a charge?" "Does the State or the Federal Government have jurisdiction when...?" "Do I have to file an EEO-1 form for every division?")

- Most employers are unclear as to what the "right" goals and timetables are; general statements about how to analyze one's own situation, such as "determine the minority population in your labor market area," are viewed as not responsive.

- Employers that, in general terms, concede the possibility that they discriminate, often "blame" it on the union.

- Many corporate personnel managers perceive training of foremen and supervisors as the best way to reduce minority and female under-utilization and as forestalling possible charges of discrimination. Larger companies indicated that they either were developing or would develop such programs with their own staff; smaller companies claimed the need for outside assistance in such training efforts.

- The companies interviewed were not aware of the possibility of filing a "voluntary

agreement" and once appraised thereof, they were not clear as to its usefulness.

- Three of the senior managers perceived a self-audit as useful in establishing priorities among the types of EEO activities they would undertake to protect them from the risk of being taken to court.

CHAPTER 3

BARRIERS TO UPWARD MOBILITY OF MINORITIES AND WOMEN

BARRIERS TO UPWARD MOBILITY OF MINORITIES AND WOMEN

Much - not little, as was the case only five years ago - is known about barriers to the upward mobility of minorities and women. Barriers to minority and female upward mobility defy simple description or assessment because:

- barriers assume a large variety of forms;
- barriers cannot be easily assessed in view of the absence of "benchmarks" by which to judge their dimension; indeed, determining when the barriers screen out "too many" or "too few" is practically impossible;
- barriers to upward mobility of minorities and women are part and parcel of the application of broadly accepted, normal, sanctioned and *prima facie* valid, personnel procedures and selection criteria;
- barriers to upward mobility of minorities and women are related to the sizes of the "internal relevant labor pool" from which promotions are made.

This section of the report discusses the above four topics beginning with a section describing the variety of barriers and progression patterns encountered.

Progression Patterns and the Form of the Barriers

All situations studied indicated that barriers to the upward mobility of minorities and women functioned as an integral part of the way in which the personnel system operates. Understanding of current patterns of systemic discrimination is possible only in the context of the history of a company's hiring practices. This was found in most marked fashion in Company B and among hourly workers at a Midwest Manufacturing Plant. Details of these two situations (although reported upon in an earlier context) are summarized below.

The Hiring and Mobility Practices of Company B. Workers are hired by Company B almost exclusively into four (4) separate entry categories. The company adheres rather strictly to an overall policy of "promotions from within"; therefore, workers move to more advanced categories only from these four entry points. In addition, one of the entry categories into which applicants are hired is Management Group I - and only credentialed professionals are hired for this group. There is little movement into management from the physical, technical, or clerical categories.

Well-defined lines of progression reflecting functional requirements of the company exist within each of the four (4) broad categories. Within the existing lines of progression, the various job classifications, particularly in the physical group, appear to constitute an effectively organized set of jobs, each clearly linked to the next higher. This makes for easy upward mobility, requiring a minimum of off-line training, only occasionally supplemented by formal apprenticeship arrangements.

All physical, technical and clerical classifications and personnel are covered by collective bargaining agreements. These establish clear-cut and well-understood procedures for seniority-based promotions involving - in the physical and clerical categories - posting and bidding. The primary criterion for movement up a line of progression is classification seniority. Employee performance and/or qualifications which are comparatively superior do not influence selection for promotion.

The result is a very high and direct correlation between seniority and residency in the higher job classifications. In almost no case was a person with lower seniority found in a higher occupational classification. All entry-level classifications lead to a set of higher rated, more complex classifications. Approximately twenty-five separate lines of progression were identified, each line being viewed as a specific career path.

The bulk of the underutilization of minorities and women and the higher job classifications within the various lines of progression is thus traceable, primarily, to the fact that Company B had hired almost no minorities or women prior to 1966. Thus, most promotions go to workers hired prior to 1968; the roster of all employees organized by seniority and

race indicated that minorities make up less than one out of eight employed workers with more than six years seniority. The company's promotion procedures eventually will enable minorities and women to compete for those few promotion possibilities that exist. But the near future will not see many promotions.

Outreach, selection and placement processes for women all contain elements which operate as barriers to the employment of women in the physical categories:

- Company communication with the external labor market, primarily advertisements, tend to be oriented toward the male population.

- Women who are not informed about options for entry-level placement cannot exercise choices. Employment interviewers function within a context of male perceptions concerning the traditional work-role of women. In not considering women for physical job openings, interviewers do not inform them about vacancies.

- Although they are not described in terms of standard, documented personnel practice, the company in fact applies physical criteria in selecting applicants for the physical classifications, even though no established relationship exists between observed physical traits and job requirements.

- Two pre-employment test batteries are used within the selection process: one is for physical and technician jobs and the other is for clerical jobs. Minimum scores are criteria for placement. Men are given the opportunity to take both test batteries. Women take only the clerical test battery and thereby are not considered for physical or technical job placement.

Similarly, the process of job placement within the physical job classification leads to a disproportionate incidence of Blacks and Spanish-surnamed Americans in less desirable lines of progression. Once the worker is so placed, the existing collective bargaining agreement, in its stress on

seniority, reinforces the discriminatory placement. This is evidenced by the fact that in bidding for promotion to another line of progression, the employee falls lower in the seniority preferential sequence through which vacancies are filled. Other similar discriminatory effects were found to exist throughout the company in spite of an apparently neutral promotion system.

Progression Patterns In One Plant of a Midwest Manufacturing Corporation. Due to the racial makeup of the surrounding labor area, the vast majority of hires from 1967 to 1971 were Black; the 1972 racial composition of the plant, among hourly workers, being about 85% Black. There is nothing to indicate discrimination either in placing the new hires or in their subsequent work history. What does become clear is that:

- there is no system of promotion via jobs of related skills and knowledge (promotion is largely restricted to intra-departmental moves, but this is the only systemic element that can be observed);

- typically, employees do not progress from entry jobs much above a 10% (often only a 5%) increase in pay (allowing for cost-of-living changes) even in five years. Of the approximately 600 individuals in the sample population, only one had progressed in five years to a skilled trade (non-apprenticeable) position. There is no evidence, in examining separate years of hire, that the situation is changing.

Other situations indicate that systemic discrimination is traceable to criteria used in original placement and to the size of the relevant labor pool from which promotions are made. If in Company B, it can be forecast that minorities and women will eventually reach supervisory positions partly because of the "narrowness" of the promotion path, no such forecast is possible where the size of the group from which promotions are made is very large and has few minorities. In these situations, minorities and women tend to "get lost."

The Absence of "Benchmarks." The issue of the upward mobility

of minorities and women is a subset of the general problem of upward mobility; the barriers to upward mobility for minorities and women are a subset of the general barriers to upward mobility. The parameters of the subset flow from those of the larger set. For the larger set - upward mobility - size (i.e., how many workers get promotions) is indeterminate and not directly controllable by the firm. All that is known about the level of upward mobility is its major determinants.

The Determinants of Upward Mobility. Intra-firm upward mobility is determined by the technological characteristics of the firm, its employment growth in relationship to external labor market conditions, the variety of its products, and its employment, training and supervisory policies. The latter, in turn, appear to be shaped by aggregate employment conditions and society's wishes and judgments. The most significant barriers to internal mobility are the discontinuities of the production process and the fact that the organization of the work process is rarely arranged as to permit less-skilled workers to be trained for the jobs of higher status, complexity and income. Personnel policies and the whim of the supervisors decide who rather than how many move up. Thus, the growth rate of the economy turns out to be the most fundamental determinant of upward mobility for the committed worker.

Our experience bears this out at the level of the firm. In Company A, for example, newer plants had more promotions than older ones; in Company B and in the Midwest Plant, departments with more turnover had more promotions. In another study, it was found that:

> What is clear is that the increasing chances for the individual long-term employee to become a manager are the result of (in order of importance): Increased turnover among the young; decreased employment stability of the college graduates hired in the 1960's; and over-all increases in employment in the telephone system. The great majority of blue-collar workers who remain with telephone companies through their lifetime retire as blue-collar workers; yet, a significant and increasing minority (between 25% and 35% of those with more than ten years experience before they are 35) of long tenured workers have

become first-line supervisors and a little less than half of these can be expected to go on to higher levels of management.

Whether any one level of upward mobility is "enough" or "too little" cannot be scientifically established, there is no average model figure one can rely upon - as there are "good" and "bad" times, growing and declining industries, firms that expand and firms that contract. But, if, when all is said and done, the individual employer, corporate or otherwise, has little freedom as to how many promotions can be made, there is much more freedom as to who is hired or promoted. Indeed, until the passage of legislation limiting employer criteria, the employer had almost complete freedom in the selection of individuals.

Normal Promotional Procedures and Criteria as Barriers

Every employer sets out to attract the "best" possible people to make his company efficient and profitable. The employment system is to achieve this goal. The art, or science, of personnel management - as indicated earlier - is all about finding, promoting, assigning the "best" workers to the "right" jobs. In ultimate analysis, this involves the matter of judgments. It means hiring "committed," "reliable," "eager" workers and "creative," "self-starting," "innovative" managers. The personnel system is geared to search out such candidates. What is very difficult is the operationalizing of such criteria. In most cases, the matter becomes one of applying preferences, hopefully wisely. A recent study by Akabas on the supply determinants of earnings in the New York City men's and boys' clothing industry has given first empirical concreteness to the notion of the "preferred" worker.17/ Indeed, the Akabas study aside, there is significant, albeit otherwise mostly anecdotal, evidence that the promotable worker is also a "preferred worker." The characteristics of the preferred worker have little to do with productivity, but rather reflect the social prejudices of management, of the supervisors and often of the majority of the workers in a shop.

In management positions - where the being or not being in the

17/ S. Akabas, "Supply Determinants of Earnings in the Men's and Boys' Clothing Industry," Ph.D. dissertation, GBA/ New York University, 1970.

management category is an entirely internal affair - the notion of the preferred worker is even more central. In all environments studied, analysis of the characteristics of management personnel indicates that the necessary criteria for becoming part of management are, in order, maleness, whiteness and middle-agedness.

The fact that personnel policies, the organizational structure of the firm, and the whim of the supervisor are at the heart of who gets promoted, leads to misunderstanding. From it, many argue that the internal operations keeps upward mobility below a desirable level, and that institutional organizational change is required. It is probably nearer to reality to say that organization change is often required to shorten the time gap between changes in personnel policies and changes in the characteristics of a "new" labor force. Also, there seems to be enough evidence to argue that external pressures as exemplified in equal opportunity legislation is required in most institutions to bring about a greater correspondence between the objectively measurable manpower needs of a firm in terms of productivity and the perceived "preferred" characteristics of its labor force.

What has been said above may seem obvious to the reader. It has been noted once again because - in our judgment - it places in a clearer light three of the most important findings of the MMP:

- The concept of parity as the "benchmark" against which to test a non-discriminatory employment practice is useful and practical. Indeed, it highlights the extent and nature of the "preferred" worker syndrome, it operationalizes the test of "job relatedness of criteria," and permits management to give meaning to its search for "loyal" and "able" employees.

- It permits rejection of the notion that hiring minorities involves special costs. Indeed, it had been argued that minority promotions were constrained by the technology, the cost structure, the product market, and the characteristic of the labor supply, which were not only taken as "given" but also perceived as limiting the possibilities of achieving parity.

  Our work so far suggests the exact opposite. To

our investigator's surprise, the economic constraint did not surface. Neither in written statements about EEO policy nor in discussion at the corporate division or plant level was the matter of economic efficiency raised to argue for or against or to constrain equal employment programs. Concern with the "bottom line" in relationship to minority mobility either is not understood by employers or (most probably) not translatable in operating terms. The construction at the level of the firm, of a convincing economic justification for achieving parity thus seems a less urgent task.

Movement towards parity occurs and appears easier when the technology, location decisions, organizational structures, etc., are all manipulated to achieve employment parity goals. In HDC's work in Company U, the departmental separations between urban affairs, personnel and industrial relations, as well as the corporation decentralized structure, were found to be the cause of the excessively low-mobility and legally-discriminatory practices at one of their plants. All these have now been changed. Conversely, in Company A, the successful introduction of innovative "reversible seniority" that seemed to account for high mobility in one of its plants was found to be related also to the opening of a new plant structure and to the informed interaction between personnel, affirmative action and industrial relations staffs.

Indeed, contractual seniority, generally viewed as seriously impeding employment parity goals, was found to represent an area of creative adjustments which facilitate minority movement consistent with the protection of individual seniority rights and of "the maturation" intent of the seniority arrangement. Conversely, the "last-in, first out" requirement in termination was found maniputable at no cost to permit protection of minority gains achieved through non-discriminatory hiring.

- The MMP's interim report had noted the presumptive need for the development of management techniques to be applied following the identification of systemic

discrimination. Remedial activities are discussed at length in HDC's Employers Manual. Here we cite the salient paragraphs:

"The initiating of remedial activities is rarely limited by technical "state-of-the-art" boundaries. It involves primarily the proper application of well-known personnel policies and practices. What appears most useful is to build elements of remedial programmatic activities in direct response to what the self-audit uncovered. The process of developing remedial programs is a painstaking one as it must be responsive to the precise specifics of existing conditions. There are no model remedial programs that the EEOC or experts can issue. Each must be tailor-made. All that can be done is to list the ingredients of programs with a greater likelihood of success.

"The only measures of success in evaluating remedial affirmative action is the direct relationship between it and minority and female hire and promotion."[18]

The Removal of Barriers

The identification of the particular form that barriers to mobility of minorities and women takes on in a given employment situation is the crucial task. The specific forms of the barriers makes for the firm's "systemic discrimination." Irrespective of "corporate willingness" or the corporate officers' knowledge of legal requirements, the technique for ferreting out systemic discrimination is not known by employers.

The "how" this is to be done is detailed in HDC's manual. Once the specific mechanisms of discrimination are identified, techniques for their removal is within the tool-kit of employment specialists. Among the most important techniques are "jobs analyses" test validation techniques,

18/ Identifying Systemic Discrimination: An Employer Manual for a Self-Audit, HDC, September 1973, pp. 40-41.

careful application of skill and knowledge categories, etc. These are detailed in various easily accessible manuals.19/

19/ See HDC's Minority Mobility Project - Interim Report, October 10, 1972, pp. 56-58 and HDC's Increasing Employee Mobility Opportunities.

CHAPTER 4

EQUAL EMPLOYMENT REQUIREMENTS AND UPWARD MOBILITY

EQUAL EMPLOYMENT REQUIREMENTS AND UPWARD MOBILITY

This section summarizes what was learned about the relationship between equal employment opportunity legislation policies and practices on the one hand, and upward mobility on the other.

The Relationship of EEO Activities and Upward Mobility

Internal Labor Markets. Internal labor markets play a central role in employment discrimination. "They do so by selecting workers at 'ports of entry' and by conferring privileges upon the internal labor force not available to those in the external labor market."[20/] This phenomenon was illustrated in an almost textbook sense in Company B. Company A was found to have a larger number of entry points; consequently the discriminatory effects of its internal labor market were less marked.

Conventional wisdom in the manpower field has long established that "... the occupational structure of an industry is the major determinant of the availability of upgrading opportunity."[21/] Upgrading opportunities thus are very limited in firms that are part of the industries with very flat occupational structures; conversely, where the production characteristics and work organizations of an industry - such as automobiles and chemicals - are such as to create several rankable occupational categories, there are generally greater opportunities for upgrading with little reference to training requirements.

To this well observed phenomenon which our work fully supports, we add the following finding:

> The potential for upgrading of minorities and women is proportionately greater in "peaked" structures

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20/ P.B. Doeringer and M.J. Piore; International Labor Markets and Manpower Analysis; Heath Lexington Books, Lexington, Massachusetts, 1971, p. 133.

21/ See, e.g., Charles Brecher, Upgrading Blue Collar and Service Workers, The Johns Hopkins Press, Baltimore, Md., 1972, p. 93.

and, conversely, in flat structures the possibility of upgrading minorities and women is similarly proportionately more limited.

In assessing how the absence of internal upward mobility systems effect the utilization of minorities and women, again we find confirmation of what is already known:

> The absence of a career progression system limits very significantly the potential for upward mobility of minorities and women.

The absence of potential for minority upward mobility in such situations, is attested to by our experience in the foodservice industry. The foodservice industry was found to be prototypical of marginality; most of its firms are small, staffed primarily by marginal, underemployed workers paid very low wages. Minority and female utilization throughout the industry is high, with most of the minorities employed in "back-of-the-house" activities. In other job categories (e.g., hostess) minorities are not represented at all.

As a totality, the industry is characterized by "dead-ended jobs" and the lack of internal upward mobility. Where and to the extent that internal promotions take place, they are unrelated to seniority, performance, education, age or related experience. Here promotions are often traceable to personal relationships with the supervisor thus creating ample opportunities for individual (not systemic) discrimination.

The Modification of Existing Mobility Structures. Among non-exempt workers, particularly in manufacturing, both personnel practices and collective bargaining agreements have created rigid and formal structures. These have created also identifiable "ports of entry" (i.e., those job classifications into which most workers are hired).

Company B represents the almost classic situation of systemic discrimination. As we have seen in Company B, each port of entry is linked to a specific line of progression in which jobs of successive levels of complexity are clearly interrelated. Minorities move only as they gain seniority. Imbedded in this structure we find a placement process which made for a disproportionate assignment of minorities to less desirable progression lines and the complete barring of women from all "physical" progression lines.

In Companies B and U, seniority was important, although seniority is not necessarily the crucial determinant of mobility. The characteristics of the seniority arrangement - department-wide, plant-wide, company-wide, etc. - are a more significant predictor of the overall level of mobility even though they do not control every promotion. Among job categories with narrow pay differentials and where most workers have roughly the same seniority, who gets promoted - as skill and knowledge requirements are either not established or indifferentiable - is, in spite of the alleged formality, often a matter of whim or chance. Such situations seem to permit either discrimination or integration according to whether assignments to predominantly White progression lines are or are not made. In Company A, the potential flexibility of the structure was utilized, at least in some instances, for the more rapid upward movement of a few minorities.

Flexibility. In terms of the flexibility of existing occupational structures with respect to the accelerated upward movement of minorities and women we have noted that where minority incidence has tended to be equalized, it has involved an increase in the number of entry points at which they have been hired, changing seniority structures and changing the interrelationships among job families. We conclude that:

- Internal labor market structures are modifiable.
- Employers as a group are either unaware of the discriminatory nature of what they consider normal and appropriate practices or fearful about modification.
- To accelerate the mobility of minorities and women, employers occasionally develop arrangements - such as skill inventories, that permit them to tap a larger pool of workers without changing the structure of the internal labor markets.
- In organizations with flat mobility structures, upgrading of minorities and females calls for considerable job restructuring and the creation of new, formal and functionally integrated career ladders. This can be achieved by clustering separate units into large structures, thereby creating administratively the equivalent of internal labor markets amenable to

carefully considered affirmative action intervention.

External Labor Markets. Deficiencies in the external labor market bear upon equal employment opportunities only in the broadest sense: they are not amenable to direct manipulation by employers. Where such interventions may be possible, they may not be appropriate from a public policy viewpoint. Discrimination in schooling, housing, health, etc. against minorities and women in the totality of social services that establish the characteristics of workers available in the external labor market actually creates hard limits as to the possibility of reaching employment parity. In certain occupational categories for certain industries in which training is of long duration and industry-specific rather than firm-specific (e.g., radiologist, high-voltage electrical maintenance engineer, multilith operator), the supply of minorities is limited. Here, even the most aggressive and well thought out affirmative action plan or any remedial program developed by the employer may not help. The task is the schools. Under such circumstances, the attempt to facilitate employment parity within lines of progression and across job classifications would have to include both special outreach activities as well as "traditional" internal upgrade training approaches for minorities and women. Even though requisite skills may be available among non-minorities in the external labor market, there could be justification for preparatory, vestibule, and on-job training for minorities and women in order to create a balanced labor supply in terms of race and sex.

As noted, in neither Company A or Company B have we found skill shortages amenable to amelioration through training which operate as barriers to the upward mobility or utilization of minorities and women. In Company G, a deliberate effort at modifying a collaborative, area-wide apprenticeship program - reinforced by a remedial pre-apprenticeship training program - was found effective in increasing minority representation in waiting lists for apprenticeship slots.

The Greater Potential for Upgrading Among Exempt Categories. Data on occupational utilization of minorities have shown limited improvements. How has it come about? Our experience in both Company A and Company B suggests that movement toward parity occurs in spite of the established ineffectiveness of the special programs meant to do so and residual discriminatory practices among the non-exempt classifications. But it takes time.

At the exempt levels, upgrading may be accomplished more easily, since hiring and promotion criteria are expressed in broad language, permitting diverse interpretations. Also, as the relationship between staff functions and output is less clear, the manning tables (i.e., the number of available slots) are more flexible. For many staff, technical and managerial positions beyond certain levels of general education and competence, the needed training is specific and internal to the firm; what most managers are required to master are the peculiarities of each firm - its personnel practices, collective agreement, organizational procedures, etc. If the employer desires to fill such positions, he may tap a new and larger universe of candidates and train them on the job.

For exempt positions, thus, the notion of "employable" and the reality of a "vacancy" are malleable to those who wish to manipulate them.

Employer-originated arrangements or remedies suggested by governmental agencies involving accelerated promotions, identification of minority professionals, and internship programs all have been found effective in increasing utilization of minorities and women.

A Summary Statement: Broad Relationships Between EEOC and Internal Labor Mobility

The following general observations appear appropriate:

1. The anti-discriminatory - Title VII - part of the equal employment opportunity policy continues to have a major effect on all levels of American management by giving the personnel system a new and greater importance. Just as the Wagner Act and the development of unions forced employers to clarify the limits of their power by giving "commands" to their employees, so Title VII is now forcing employers to clarify and rationalize the criteria used for hiring, selecting and promoting individual production workers, as well as those higher in the occupational and organizational hierarchies. The legal requirement that criteria used to select workers in hiring, placement and promotion be explicitly and specifically job related forces the employers once again to look at job content and, albeit indirectly,

encourages the application of various forms of modified JTRA's. Title VII also forces the employer to redefine his perception of required characteristics. Indeed, while employers still search for "trustworthy, able, eager, reliable, etc." workers, they are now forced to translate these very valuable perceptions and questions in specific operational terms.

2. The level - that is, the number of people - of internal labor mobility is found again, no matter how we try not to make it so, to be primarily determined by a number of external economic variables. The level of mobility is still a function of changes in technology, expansion in product and service demand, increases in the size of the firm and its employment, etc. Neither the "higher-utilization" (OFCC), nor the "non-discrimination (EEOC) aspect of the national equal employment policy significantly influences the level of internal labor mobility. The major impact of the non-discriminatory part of the equal employment policy is in changing slightly the chances of promotions of minority groups and women without changing the total number of promotions. Therefore, provided economic activities continue at a reasonably high level, we can, in the near future, expect to see a reasonable number of promotions of minorities and women to the top of job categories, to the top of existing lines of progression and even across broad occupational categories.

3. The major impact on the mobility of minorities and females traceable to Title VII is in firms and industries with well developed and properly applied personnel policies, clear job structures, explicit lines of promotion and reasonably developed career ladders. Particularly when such conditions are buttressed by strong and well structured union agreements, minorities find few hidden barriers and there are almost no "bypasses" in the pattern of Black promotions. Our work at Company B made it quite explicit that the upward mobility of minorities when all is said and done, is determined primarily by the level of seniority of Black workers within the firm.

4. On the other hand, where job structures, lines of promotion, and career ladders are either absent or

poorly defined, employer decisions still reflect their choice of the "preferred" worker. In most such cases, the choice of the "preferred" worker, while not irrational, is often not scientifically defensible and not job related. In such situations, we have a greater number of minorities and females in dead-ended jobs and we find employers open to the possibility of charges of discrimination.

Specific Corollaries of the Government's "Big Stick" in EEO Matters. The following seem to be the more important specific channels and effects of pressure:

1. The paths of leverage of the governmental thrust are many. Among them it is worth noting:

   - The requirement of filing data on minority and female utilization, by forcing management to examine at least the statistical facts, encourages compliance.

   - The obligation, in the first instance upon government contractors only, to file an affirmative action plan, forces management to look at the future.

   - The compliance review mechanism, although at present for most employers a primarily formal happening, operates as an inducement for further monitoring of the manpower system.

   - The possibility of EEOC investigations, stemming from either individual, class or "Commissioner's charges," operates as an additional inducement for employers to assess and review their own personnel structure.

2. The number of "entry points' tend to increase as Title VII pressure indicates that hiring requirements for positions above entry points are not justified. This primarily helps female mobility into categories from which they tended to be excluded. When new entry points are created without corollary shapes in lines of progression, promotion lines become shorter and the number of dead-ended jobs may increase.

3. The importance of the first job placement following hire, which previously seemed to have small weight in determining individuals' future internal mobility, is now understood to be a decision that crucially determined a worker's possible upward mobility.

4. Narrow seniority boundaries - as long promised - tend to reduce the possibility of upward mobility for minorities and females. We have learned that management and labor tend to defend existing seniority lines with about equal vigor. The broadening of seniority boundaries and the creation of formal transfer points among lines of progression is clearly beneficial to the upward mobility of minorities and females. This again points to the importance of scientifically established rational mobility systems.

5. The utilization thrust (NAB/JOBS, etc.) of the equal employment opportunity policy leads employers to hire minorities and females in departments, plants, and occupations with high turnover rates. While this helps minority penetration in employment, if not occurring hand in hand with an attack against discrimination, it tends to leave undisturbed the distribution of minorities and females in employment. The simple hiring of more minorities thus indirectly contributes to reported higher minority turnover rates.

CHAPTER 5

PUBLIC POLICY: OBSERVATIONS AND RECOMMENDATIONS

PUBLIC POLICY: OBSERVATIONS AND RECOMMENDATIONS

In the course of "field" visits, discussions with the Commission's staff and in the process of preparing the Guidelines and the Technical Assistance Manual for VPO's, a number of broad administrative issues concerning practice and public policy have been identified for clarification. This section is based upon project experiences and upon discussions with employers and specialists in EEO matters. It treats separately, to the extent that they are separable, matters of policy and matters of implementation.

Policy Issues

The R&D work to date suggests that a large number of broad policy issues call for clarification of purpose and priority. They are listed below primarily as questions reflecting areas of employer doubt and uncertainty.

1. To what extent is current "national policy" simply non-discriminatory and to what degree is it compensatory? Is it possible to achieve the politically needed level of employment parity soon enough without applying a compensatory policy? Clarification of this issue would lead to:

   - Better conceived private "goal setting" and, particularly, timetables for upgrading from within the internal labor market at more rapid rates. Present guidelines as to hiring and promotion "goals" and "timetables" only specify that employers are to make a good faith effort. The formulation is obviously valid and this is all the courts require. But specific goals have to be set and in the Manual the "goal" has been set at parity and the "timetables" are a derived function of future vacancy and turnover rates. In practice, specific goals and timetables are a matter of negotiation and this in turn makes for a reality of disparate effects bound to eventually displease both employer and beneficiary.

- More consistent application of remedial requirements would equalize the burden of employers in implementing equal employment policies. Compensatory policies have limits; such limits are established by the directive of applying (a) "the least disruptive remedy," (b) the legal and political requirements of true "color blindness" as expressed in its anti-preferential provision and (c) limitation on the supply side which, at each point in time, objectively limit the availability of women and minorities truly qualified for a given job. But again, they permit more variation than appears healthy.

2. What is the balance of current national policy to be when the goals of employing the "disadvantaged" are in conflict with the goals of helping minorities, women or other groups? Here, the situation appears clear: the interests of women and minorities are protected by a set of laws while the interests of the disadvantaged (e.g., the veterans) are furthered by a set of specific programs implemented through systems of incentives and moral persuasion. In fact - particularly in the perception of employers - the two thrusts of policy are unclear and their application different. This is so for good reason. Indeed, while improvements in the conditions of the disadvantaged can be achieved with an expanding economy "...supported by a governmental commitment to overcome deficits in education, training rehabilitation and social support..." which makes for "...unambiguous social and political mandate..."22/ this is not necessarily so in the case of minorities and women. In the latter case:

> By contrast, upgrading requires interventions wherein the government role is not so obvious or clear-cut. Upgrading has always taken place in private industry and public institutions. Personnel use has always been considered a management prerogative, shared when

22/ An internal memorandum on Upgrading prepared by S. Brandwein, U.S. Department of Labor, Office of Research and Development.

> it is, with organized labor equally jealous of its rights. The upgrading intervention must be responsive to the differences among industries, companies, localities and managerial levels, as well as to varied circumstances within occupational classes.
>
> In this different, subtle and complex employed part of the manpower service spectrum, it is more than usually necessary to distinguish R&D considerations from program and policy ones... Policy insight must evolve more gradually; it is less amenable to hypothesis testing.[23]

The complexities described above are heightened when it is noted that a large number of minorities are also "poor" and underemployed.

Because the issue is complex, it needs clarification; in that connection the MMP found that:

> In-plant experience indicates that, although minorities benefit by both activities aimed at "employing the disadvantaged" and by "affirmative action," the two activities are crucially different in terms of social goals and public and private implementation. Activities aimed at the disadvantaged appear generally ineffective in terms of their own stated goals; all they seem to provide are temporary subsidies to worker and to employer, of limited significance to either. Furthermore, NAB/JOBS types of programs may have the effect of detracting from affirmative action activities as:
>
> - they inflate the measures of minority employment;
>
> - they convey to the employer a feeling of "doing more" than he actually does;

23/ Ibid.

- they deflect from efforts aimed at identifying discriminatory barriers;

- they are time-consuming.

3. To what extent do current governmental activities "over-emphasize" the qualitative betterment of minority workers through training at the expense of activities aimed at removing barriers to employment policy?

4. To what extent should the equal employment opportunities thrust be carried through agencies other than those currently involved in affirmative action activities? How much could the Bureau of Apprenticeship Training of the Department of Labor, the Labor-Management Services Administration and other similar agencies contribute to employment parity through a more aggressive stance?

   It seems clear that heightened enforcement activities of the Equal Pay Act along with broadcasting of information about its requirements - because of the EEOC's strategy of linking this Act to Title VII's broad pattern of discrimination suits - would contribute to improvements in the employment conditions of women and remove one of the most pervasive forms of discrimination.

Policy Implementation

Major issues of implementation have been found to exist so far as the meaning of "labor market parity," the overlapping jurisdiction of public agencies, the lack of pools of information about successful affirmative action and the underutilization of manpower training funds. The most serious ones, however, have been found in the EEOC's lack of clarity as to "voluntarism."

1. The provision of technical assistance in the field of equal employment opportunity to employers by governmental agencies is extremely limited. At present it consists primarily - be it OFCC or EEOC sponsored - in the explication of the law and Executive Orders. To the extent that it goes beyond that, it deals with administrative and not substantive matters. What is required is the development of clearer mission boundaries inclusive of a strategy for priorities and outreach.

2. All DOL efforts that contribute to a greater understanding by employers of the variety of forms involved in "systemic discrimination" appear proper. It seems to be particularly important for the DOL to find ways in which employers can be told that systemic discrimination has little to do with their personal commitment to get rid of discrimination; this might reduce the resistance to analysis of existing conditions triggered by the negative overtones of the word discrimination.

3. All DOL efforts aimed at encouraging the introduction of rational mobility systems - related or unrelated to training - need encouragement as they can be shown as influencing a socially more desirable minority and female occupational (and, therefore, economic and socio-political) distribution.

4. The development and publication by the Bureau of Labor Statistics of additional and more frequent data series showing minority and female occupational incidence by industry for urban areas and SMSA would contribute to more precise analysis of employer compliances and facilitate that setting of goals and timetables. A creation of a pool of information about effective adjustment mechanisms would have large payoffs.

5. Inasmuch as employment parity is viewed primarily as a broad indicator of fairness rather than as a concrete and applicable quantitative measure, both Technical Assistance Officers and even the best-intentioned employers are handicapped in setting forth specific minority utilization goals. The development of specific definitions and criteria of parity with appropriate local and national benchmarks would help in the setting of minority employment goals and in measuring how fast they are being achieved.

In terms of immediate steps to implement the national movement towards equal employment opportunities, we have established that:

1. Employers, as a group, do not now have the know-how to identify systemic discrimination within their firm, and that therefore they need assistance to do so.

2. Employers do not generally have the know-how on how to apply "known techniques" that would simultaneously link placement, training, and upward mobility activities and remove systemic discrimination.

In view of the above, the development of technical resources in this area represents a proper and effective use of government funds. The impact of expenditures to provide employers with the needed technical know-how is in our judgment bound to be very large, particularly when coupled with an expansion of the provision of technical assistance in agencies whose main current function is investigation on compliance.

Indeed, while the "will" not to discriminate is important, knowing how to speed up the movement of minorities and women is crucial.